



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,301	05/08/2001	Robert W. Killick	038441/0104	2790

7590

10/08/2002

Alan I Cantor
Foley & Lardner
Washington Harbour
3000 K Street NW Suite 500
Washington, DC 20007-5109

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 10/08/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.
09/831,301

Applicant(s)

Killick et al

Examiner

Alton Pryor

Art Unit

1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Sep 18, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attachment.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 33-38 and 41-45

Claim(s) objected to: 5-10, 12-14, 17, 21, 23, 25, and 26

Claim(s) rejected: 1-4, 11, 15, 16, 18-20, 22, 24, 27-30, 32, 39, and 40

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

10. ☐ Other: _____

Alton Pryor
Alton Pryor
Primary Examiner,
A.U. 1616

Art Unit: 1616

Applicant's arguments filed 9/18/02 have been fully considered but they are not persuasive.

I. Applicant argues that Saphakkul discloses water as a solvent (since water is present in the majority), rather than a lipophilic compound as the solvent. In the claims, Applicant states that the **lipophilic solvent is not in excess of about 75% by weight**. The art cited qualifies since according to instant claim language 0% lipophilic solvent can be present.

II. Applicant argues that Saphakkul does not teach or suggest that a fatty alcohol is a lipophilic solvent. Examiner points out that a fatty alcohol has a long hydrocarbon chain which renders a fatty alcohol hydrophobic or lipophilic.

III. Applicant states that rejection is improper since it sets forth non-analogous art. Applicant argues that cited references are related to hair compositions rather than to agricultural compositions as instantly claimed. Examiner takes the view that in a claim to a composition, statement to compositions intended use has no patentable weight.

IV. Applicant argues that there exist no motivation to combine the two cited references. Applicant argues that Saphakkul is directed to a hair dye composition; whereas, JP '898 is directed to a hair shampoo composition. Examiner argues that both prior art compositions are individually used as hair conditioners. This is ample motivation for combining prior art references.

Art Unit: 1616

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

A handwritten signature in black ink, appearing to read 'Alton Pryor', with a stylized, cursive script.

Alton Pryor

Primary Examiner, AU 1616

10/2/02